



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

FEB 17 2010

LR-8J

**CERTIFIED MAIL 7001 0320 0006 1448 4035**  
**RETURN RECEIPT REQUESTED**

Tom Safley  
Senior Counsel  
Environmental Health & Safety  
Koch Industries Inc.  
4111 East 37<sup>th</sup> Street North  
Wichita, Kansas 67201

Re: Koch Pipeline Company LP Self-Disclosure, Hartford, Illinois facility  
Notice of Determination (NOD)

Dear Mr. Safley:

The U.S. Environmental Protection Agency (EPA) is in receipt of your letters dated July 18, 2008, August 29, 2008 and September 26, 2008, in which you disclose, on behalf of Koch Pipeline Company LP (Koch), possible non-compliance with reporting requirements under the Resource Conservation and Recovery Act (RCRA). EPA sent Koch requests for information on October 23, 2008 and February 12, 2009. EPA received your responses on November 7, 2008 and March 16, 2009. EPA appreciates Koch's willingness to self-police, disclose, and correct violations at its facilities in a timely manner. Specifically, your letters voluntarily disclosed that Koch failed to do the following:

1. Hazardous waste determinations, as required by 35 IAC 722.111[40 CFR 262.11];
2. Manifesting requirements, as required by 35 IAC 722.120[40 CFR 262, Subpart B];
3. Labeling, marking and placard requirements, as required by 35 IAC 722.131-133[40 CFR 262, Subpart C];
4. Accumulation date requirements, as required by 35 IAC 722.134 [40 CFR 262, Subpart C];

5. Recordkeeping requirements, as required by 35 IAC 722.123(a)(3) and 722.140 [40 CFR 262, Subpart D]; and
6. Annual Report requirements, as required by 35 IAC 722.141 [40 CFR 262, Subpart D].

The disclosure was made pursuant to the EPA policy, "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," referred to as the "Audit Policy" (see 65 Fed. Reg. 19618, 2000).

EPA has determined that, based on the information provided in the documents listed above, Koch's self-disclosure comports with the requirements in EPA's Audit Policy. In reaching this determination, EPA has considered nine criteria in the Audit Policy, as set forth below.

1. Systematic Discovery: EPA evaluates whether the violation was discovered by means of a systematic, internal environmental audit, or through a compliance management system that reflects due diligence in preventing, detecting, and correcting violations.

Koch discovered the violations through a periodic environmental audit of company activities. The environmental audit was part of an objective, systematic procedure and practice reflecting due diligence in preventing, detecting and correcting violations.

2. Voluntary Discovery: EPA evaluates whether the violation was identified through an activity which your company was legally required to perform and/or report, such as under a federal or state statute, regulation or permit, judicial or administrative order or consent agreement.

Koch stated its disclosure is voluntary. The issues disclosed were identified voluntarily and not through any legal mandated monitoring or sampling required by statute, permit, judicial or administrative order, or consent agreement.

3. Prompt Disclosure: Disclosure of the violation is within twenty-one (21) days of the date of the initial discovery, or such shorter period as may be provided by law. If not, the company must provide reasons for the delay.

Koch reported the issues to Jodi Swanson-Wilson, Office of Enforcement and Compliance Assurance, EPA, in their letter dated July 18, 2008. Koch stated the disclosure was within 21 days of learning of the violations.

4. Independent Discovery and Disclosure: EPA must evaluate (A) whether the company previously received notification of a citizen or third-party suit for the violations disclosed or any closely related violations; and (B) whether the

company previously received notice of commencement of a federal, state or local agency inspection or investigation or received an information request from a federal, state or local agency.

The discovery was made independent of any inspection, investigation, notification of a citizen's suit, filing of a complaint by a third party, reporting by a whistle blower, or discovery by a regulatory agency.

5. Correction and Remediation: EPA must evaluate measures taken to correct or remediate the violation. If more than 60 days will be needed to correct the violation, the company must provide a full explanation, including opinions of any technical or engineering expert relied upon to arrive at that estimate as well as the estimated length of time it took or will take to complete these measures.

Koch stated that it is not possible to correct all of the violations they identified (e.g. labeling drums that are no longer at the Hartford, Illinois facility). However, Koch certified in its August 29, 2008 disclosure, that it has corrected, wherever possible, the violations at issue.

6. Prevent Recurrence: EPA evaluates measures taken or to be taken to ensure that the violation disclosed will not be repeated, including improvements made to the company's auditing or compliance management procedures to prevent recurrence of the violation.

Koch states that it intends to take preventative measures by implementing a revised QA/QC review process to prevent the recurrence of the issues.

7. No Repeat Violations: EPA must evaluate information on the compliance status at the facility or any parent organization. Under the repeat violations exclusion, the same or a closely related violation must not have occurred at the same facility within the past three years or within the past five years if the violation occurred as part of a pattern of violations at multiple facilities owned by the same entity.

Koch stated that no similar violations have been identified in a judicial or administrative order, consent agreement or order complaint, notice of violation, conviction or plea agreement within the past three years at the facility.

8. Other Violations Excluded: EPA must consider whether the violations (A) resulted in any serious actual harm to human health or the environment or may present any form of endangerment to public health or the environment, or (B) violate the specific terms of any administrative or judicial order or agreement.

Koch stated that these violations did not result in serious actual harm to human health or the environment, did not present an imminent and

substantial endangerment to human health and the environment, and did not violate any specific terms of any order or consent agreement.

9. Cooperation: EPA must consider whether Koch cooperated as required.

EPA has determined that Koch has been cooperative. Based on these criteria and the information provided by Koch pertaining to its Hartford, Illinois facility, the disclosure comports with the requirements of EPA's Audit Policy.

This letter does not in any way preclude EPA or any other regulatory agency from pursuing an enforcement action for violations not disclosed by Koch in its July 18, 2008, August 29, 2008 and September 26, 2008, self-disclosures, or its November 7, 2008 and March 16, 2009, responses to EPA's request for additional information, if it is later determined that some of the criteria of the Audit Policy were not met.

EPA has reviewed the correspondence above and has determined that Koch received an economic benefit in the amount of \$9,238 by its disposal of the wastes generated as solid wastes, rather than hazardous wastes. The Audit Policy provides for 100% mitigation of gravity-based penalties for facilities which comply with all nine conditions of the Audit Policy. However, that portion of the penalty which represents the facility's economic gain from non-compliance cannot be mitigated under the Audit Policy. Absent the Audit Policy, the full penalty (gravity and economic benefit) would have been assessed at \$227,815. EPA reserves the right to withdraw this NOD and seek the full penalty (gravity and economic benefit) for the violations disclosed.

EPA appreciates Koch's willingness to timely self-police, disclose, and correct violations at its facilities. Graciela Scambiaterra, of my staff, will serve as your primary contact. Please send your submissions directly to her. If you have any questions concerning this matter, please contact her at (312) 353-5103.

Sincerely,



Willie H. Harris, P.E.  
Chief, RCRA Branch  
Land and Chemicals Division

**SENDER: COMPLETE THIS SECTION**

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- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

**Tom Safley  
Senior Counsel  
Environmental Health & Safety  
Koch Industries Inc.  
4111 East 37th Street North  
Wichita, Kansas 67201**

2. Article  
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**COMPLETE THIS SECTION ON DELIVERY**

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C. Signature

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*Chang H. H. H.*☐ Agent  
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